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December 2, 2004

Secretary
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RE: Petition For Reconsideration Of BPL Rule (Docket 04-37)

Dear FCC Commissioners and Staff:

I am Don Schellhardt, a Government Relations attorney and writer. I represent NATIONAL ANTENNA CONSORTIUM (NAC) and THE AMHERST ALLIANCE in their filing of a Petition For Reconsideration of the final rule in FCC Docket 04-37 (Report & Order 04-245). The final rule concerns the FCC's parameters for, and regulatory oversight of, expanded Broadband Over Powerlines (BPL) operations.

14 copies of this Petition, as well as a signed original, have been sent by Federal Express to the FCC's facilities at 9300 East Hampton Drive, Capitol Heights, MD 20743. Simultaneously, the Petition is being filed electronically, in FCC Docket 04-37, through the FCC's Electronic Comment Filing System (ECFS).

We believe that irreparable harm, possibly including loss of life, could result if the final rule is allowed to take effect in its current form. Therefore, we urge the Commission to consider our Petition as a matter of the utmost gravity.

Sincerely,

Don Schellhardt, Esquire
President, SCHELLHARDT ADVOCACY SERVICES

Submitted On Behalf Of The Following Petitioners:

NATIONAL ANTENNA CONSORTIUM (NAC), New Rochelle, New York

THE AMHERST ALLIANCE, Ferndale, Michigan

UNITED STATES OF AMERICA

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

Expansion and Oversight Of	**)**	
Broadband Over Powerlines	**)**	**FCC Docket 04-37**
(BPL) Operations	**)**	

PETITION FOR RECONSIDERATION OF
THE NATIONAL ANTENNA CONSORTIUM (NAC)
AND THE AMHERST ALLIANCE

TABLE OF CONTENTS

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FEDERAL COMMUNICATIONS COMMISSION

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Expansion And Oversight Of Broadband Over Powerlines (BPL) Technology	**)** **)** **)**	**FCC Docket 04-37**

PETITION FOR RECONSIDERATION OF THE NATIONAL ANTENNA CONSORTIUM (NAC) AND THE AMHERST ALLIANCE

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2 concerned nationwide organizations, NATIONAL ANTENNA CONSORTIUM (NAC) and THE AMHERST ALLIANCE, hereby submit this Petition For Reconsideration of the Federal Communications Commission's final rule in FCC Docket 04-37. The final rule establishes parameters for, and limited regulatory oversight of, expanded Broadband Over Powerlines (BPL) operations.

In support of this Petition, we incorporate by reference all of the documents which have been filed in FCC Docket 04-37 by one or more of the Petitioners, by the AMERICAN RADIO RELAY LEAGUE (ARRL) and by any other participants in FCC Docket 04-37. We similarly incorporate by reference all documents filed in FCC Docket 03-104, the Notice Of Inquiry which preceded FCC Docket 04-37.

A. *IDENTIFICATION OF THE PETITIONERS*

NATIONAL ANTENNA CONSORTIUM (NAC). **Founded in 2002, NAC represents those who own, lease and/or manufacture communications antennas and those who own, lease and/or build communications towers.**

Presently, most NAC Members are individual Amateur Radio Service operators, aka "hams". Not surprisingly, NAC's top priorities during the past year have been:

> **Supporting Congressional legislation, introduced by Representative Steve Israel, D-NY, that would ban the bans on ham radio antennas by Homeowners Associations (HOAs) and restrictive covenants (replacing those bans with "reasonable regulation" by HOAs)**
> ***And***
> **Opposing the FCC's "rush to judgment" on expansion of BPL operations**

THE AMHERST ALLIANCE. **Founded in 1998, at a meeting in Amherst, Massachusetts, THE AMHERST ALLIANCE is a Net-based, nationwide citizens' advocacy group for media reform. Amherst has focused mainly on establishing, protecting and expanding the current Low Power FM Radio Service -- and, more recently, on establishing a companion Low Power *AM* Radio Service. However, as part of its support for small radio broadcasters, including the individual radio operators in the Amateur Radio Service, Amherst has often joined forces with NAC on the issues of BPL and HOA antenna reform legislation.**

B. OVERVIEW: A FLAWED RULE FROM A FLAWED PROCESS

At the outset, we commend the Commission for some of its decisions in FCC Docket 04-37. Notably, we commend the decisions to retain Part 15 emission limits, to require a degree of advance notification before Access BPL systems are deployed in a given Zip Code, to require a degree of database management by each Access BPL provider and to require each Access BPL provider to assign a publicly identified "contact person" for receiving possible complaints about interference.

However, these decisions, while welcome, are not enough to alter the fundamental status of the FCC's Report & Order as a flawed rule, flowing from a flawed process.

Despite considerable modification by Congress in recent decades, including the addition in 1997 of a mandate to promote "new technologies", the Communications Act of 1934 still directs the FCC to allocate spectrum in an "*equitable* and efficient" manner and to assist with "national defense". The BPL final rule falls far short of meeting the latter two mandates. Arguably, it does not even meet the first one.

Similarly, the process by which the rule was developed fails to meet the procedural standard of "reasoned decision making", as required by the Administrative Procedure Act and the "Due Process" clause of the United States Constitution.

1. *An Unbalanced Weighing Of Risks Versus Benefits.* The final rule in FCC Docket 04-37 does not reflect "reasoned decision making". The decision making process did not weigh the true risks of Access BPL interference, and the true costs of mitigating it, against the actual benefits of Access BPL systems.

Instead, the FCC's decision making failed to provide for adequate evaluation, by either the National Telecommunications Information Administration (NTIA) or the general public, of the full risks of radio interference from Access BPL systems. It reflects *no study at all,* by *any* party, of possible effects of ionospheric propagation.

In addition, the final rule has hidden the true costs of interference prevention, mitigation, monitoring and enforcement -- by effectively shifting these costs to the victims of Access BPL interference, rather than assigning these costs to the beneficiaries of Access BPL and/or to the Commission itself. Free market economists call such hidden cost-shifting a masking of "externalities" -- and regard the practice as an *artificial distortion* of market forces.

As a related factor, the Commission has under-estimated the "social value" of Amateur Radio Service operations and shortwave reception that might be disrupted. By under-estimating the social value of these communications, the FCC has also under-estimated the social costs of interference from Access BPL.

The FCC has also placed little weight on the conflict between interference from Access BPL and international radio regulations protecting shortwave reception.

As for the alleged benefits of promoting Access BPL commercialization, the FCC's decision making process in this Docket has failed to document these benefits.

(a) *The FCC's Desire To Promote "Competition".* Citing the 1997 statutory directive to foster "new technologies", the FCC has expressed the desire to promote "competition" between land line Internet services and other Internet delivery options. However, it has given little weight to the fact that BPL is not the only form of wireless Internet service, and Access BPL is not the only form of BPL service. With or without the commercialization of Access BPL, consumers are still free to choose between land line Internet services, Corridor BPL and other wireless Internet services. There is no urgent need to add another competitor to the mix, particularly when the social and economic costs of doing so may be very high.

The FCC has attempted to counter this criticism by asserting that the range of consumer choices is significantly narrower in rural areas. Despite this claim, however, the FCC has neither attempted to limit Access BPL commercialization to rural areas nor demonstrated why rural markets would be more profitable for Access BPL providers than urban markets or suburban markets.

In this regard, Petitioners note that Access BPL "pilot projects" have generally been based in places like Manassas, Virginia and Westchester County, New York. These field testing areas are urban and suburban, not rural.

(b) ***The FCC's Haste In Adding Access BPL To The Competitive Mix.*** **Again: Consumers *already* have a choice of land line Internet services versus Corridor BPL Internet service versus other wireless Internet services. The Commission has not demonstrated, even in rural areas, *why* there is any compelling need to add Access BPL to the matrix of current consumer choices.**

Having failed to demonstrate why additional competition is necessary, at *any* point, the FCC has also failed to demonstrate why additional competition is necessary *right now.* Just as NAC and Amherst challenge the FCC's substantive assumption that commercialization of disruptive Access BPL technology is justified by a need for additional competition, so we also challenge the FCC's *procedural* assumption that the need for this commercialization is *urgent* enough to justify action before all of the relevant interference studies have even been completed.

Why not wait until *all* of NTIA's current studies of BPL interference -- that is, the *full* reports from both the Phase I *and* the Phase II research -- have been finished, released to the public and made the subject of public comments to the FCC?

Also:

Why not wait until a qualified and impartial scientific institution, such as the National Academy of Sciences (NAS), has been recruited to complete and release a meaningful study of the possible effects of ionospheric propagation on BPL transmissions? This is a potentially crucial scientific question which NTIA has not even *begun* to study.

Report & Order 04-245 states that NTIA has concluded ionospheric propagation will not be a problem. Actually, NTIA's *outline* of its full Phase II report (which has yet to be seen) indicates that ionospheric propagation is unlikely to be a problem *until and unless* "hundreds of thousands" of BPL units have been installed.

While Petitioners strongly favor a moratorium on *all* new Access BPL installations until ionospheric propagation has been fully studied, we offered -- in our June 22, 2004 Amended Motion -- a "fallback" proposal that the total number new BPL installations in the United States should be "capped", pending more study, at 500,000 units. This proposal was a *direct* response to NTIA's observation. Still, the FCC has neither adopted this proposal nor explained its reasons for rejecting it -- despite the proposal's grounding in a statement about ionospheric propagation by NTIA. It seems that the FCC's reliance on NTIA can be quite selective.

(c) *Insufficient Effort To Assess BPL Interference Risks.* This point is essentially a different way of looking at the point cited above. That is: The FCC's denial of most comment extension requests led to inadequate study, making it impossible for the FCC to estimate knowledgeably the *net* benefits (if any) of marginally increased competition (economic growth from Access BPL minus economic damage from Access BPL). Meanwhile, lack of adequate study *also* deprived the FCC of knowledge it needs to deal effectively with whatever consequences may in fact ensue from the rapid commercialization of Access BPL.

The FCC's failure to wait for adequate study by NTIA of "conventional" interference from Access BPL -- and its even more glaring failure to wait for *any* study, by *any* party, of possible ionospheric propagation effects -- left the FCC with no solid evidentiary basis for estimating *costs* of Access BPL commercialization which could then be weighed against possible *benefits.* Instead, the FCC acted in a relative "information vacuum", weighing risks and costs that were largely unknown, or at least unexamined, against benefits that were largely assumed.

Any similarities to the decision-making process that preceded the invasion of Iraq may *not* be coincidental.

Let's all hope the results are better.

(d) *Insufficient Effort To Mitigate Interference Risks.* We urge the FCC to adopt *all* of the substantive and procedural recommendations we have offered in our Written Comments *and* in our June 22, 2004 Amended Motion to the FCC (which was denied in Report & Order 04-245). However, in light of the text of Report & Order 04-245, we now highlight some specific concerns for particular emphasis.

First: *"Notching" is not a substitute for preventing interference from occurring in the first place.* While better than doing nothing, "notching" basically shifts the interference problem from one licensed spectrum use to another. It is a "second best" approach when additional actions available to the FCC, at costs which no one has called prohibitive, could prevent the problem or at least reduce its proportions.

Restricting new BPL installations to Corridor BPL units only, pending further study of Access BPL interference
"Capping" the total number of new BPL units at 500,000, pending further study of ionospheric propagation
Requiring the pre-testing of all BPL equipment, as urged by Dale Svetanoff of Iowa and Cortland Richmond of California in their Docket 04-37 Written Comments

Second: *"Adaptive interference mitigation techniques" should be carried as far as they can be, limited only by the avoidance of <u>prohibitive</u> costs.* With this caveat in mind, there is much the FCC could do while keeping the imposed costs reasonable.

Requiring that all "adaptive interference mitigation techniques" must operate *automatically* and *immediately,* rather than first requiring on-site inspections and/or physical modifications

Requiring that all new BPL units must be capable of allowing at least 3 spectrum uses to occur without disruption at the same at the same site (within 200 feet of each other), as urged by Nickolaus E. Leggett of Virginia in his Docket 04-37 Written Comments (in a proposal which the FCC does not seem to have addressed at all in its Report & Order)

Third: ***"Consultation" is not a substitute for "notching" -- or more.*** **The FCC now plans to "protect" police services, fire services and similar public sector or non-profit communications by requiring Access BPL providers to "consult" with them prior to the commencement of BPL operations. This policy effectively shifts the responsibility for protecting such communications from the FCC to thousands of scattered local decision-makers, dealing with the problem one by one by one. This shift would occur despite the fact that the FCC *knows* much more about spectrum interference than a typical hospital or police department (let alone a typical volunteer fire department) *and* is charged by law to assure reliable communications.**

At an absolute minimum, the FCC should require automatic "notching", under the umbrella of "exclusion bands", in areas where Access BPL might disrupt police operations, fire operations, hospitals, medical offices, medical laboratory equipment, school laboratory equipment and similar services. Better still would be the small "exclusion *zones*" which NAC and Amherst have proposed to the FCC.

Fourth: ***The planned "exclusion zones", for aeronautical communications and Maritime safety communications, should be larger and include more facilities.***

We urge the FCC to review again the Written Comments of SHIPCOM, INC., AERONAUTICAL RADIO, INC. (ARINC) and NAC and Amherst. We also remind the FCC of how high the stakes can be: a possible mid-air collision and/or a tanker spill that could devastate much coastline and many species. ***There is no margin for error in protecting aeronautical and maritime communications.***

Fifth: ***"You can delegate authority, but you can't delegate responsibility."*** **This is a classic axiom of good management, which the FCC seems to be ignoring.**

In seeking to justify its decision to allow the administration of BPL enforcement databases by BPL providers themselves, rather than the impartial third parties urged by NAC, Amherst and others, page 37 of the Report & Order says this:

The party responsible for avoiding interference is clearly the Access BPL operator … We therefore do not find that the data base manager need be an "independent" 3rd party.

We ask the FCC to imagine the following statement being made by the Securities Exchange & Commission:

The party responsible for preparing an accurate corporate Annual Report is clearly the corporation … We therefore do not find that the financial data need be verified by an "independent" 3rd party accountant.

We wouldn't accept that reasoning either.

While the corporation in our hypothetical example indeed carries the duty to *comply* with required accounting principles, the SEC has the duty to *monitor* compliance *and* require corrective action if it is not achieved. One part of "the first line of defense" is the standard legal requirement that corporate financial data must be verified by an impartial accountant (with additional monitoring of the accountant, to assure such impartiality, if necessary).

We believe the 2 situations are analogous. If your job is to guard the chickens, you don't hire even the most honest-looking fox as a watchman. You hire an "impartial third party": preferably, a vegetarian.

(e) *Insufficient Emphasis On Product Quality Regulation.* If one objective of promoting "new technologies" is a sustainable increase in American exports, Report & Order 04-245 errs by including under its umbrella too much BPL equipment of questionable quality. Exports of *Corridor* BPL equipment might be good "ambassadors" to "the global economy" for American business, causing little interference in the importing countries. However, simultaneously including *Access* BPL equipment among the American exports could lead to interference incidents that undercut, or even reverse, whatever appeal BPL might have in foreign markets if Corridor equipment *alone* were being sold.

Technologies, whether sold domestically and/or exported, should not be encouraged by government *regardless of quality.* Wheat and chaff should not be rolled together, under the label of "new technologies", and promoted by government simply *because* they are new. America's manufacturers should be represented by *good* new technologies (and *good* old technologies), in which they can *honestly* take pride.

We remind the Commission that the *earliest* forms of economic regulation were initiated by businesses and/or tradespersons, through guilds or similar arrangements. This self-initiated self-regulation, from "seals of approval" to binding industry standards, was established because it was *good for business* when customers could be sure that all products and/or services from a given industry would have a *minimum guaranteed quality.* This was "industry image" marketing. The system also encouraged market entry by those making long term investments in an industry while discouraging market entry by unscrupulous, "fly-by-night" operators who would simply "take the [consumers'] money and run".

Most forms of *quality of life* regulation, such as laws to restrain land development for aesthetic reasons or laws to regulate employer choices in hiring in order to prevent unjust discrimination, are roughly a century old in America. They can be traced back primarily to the public's will, energized through government action. Residential zoning, an early form of such government regulation, is a little older.

Most forms of *public safety* regulation, such as Food & Drug Administration testing or U.S. Department of Agriculture meat inspections, have a lineage in America that goes back roughly a century and a half. They can be traced back primarily to discontented Populists and Progressives, and skeptical journalistic "muckrakers", who thundered through the late 19th century and the early 20th century -- largely in response to the excesses of "Robber Baron" businesses and the Industrial Revolution. Public safety regulation, like quality of life regulation, has been largely the result of the popular will, as expressed through arms of government.

***Product quality* regulation, however, can literally be traced back to the era of Adam Smith -- and to earlier eras still. As noted above, product quality regulation was created by private sector interests, for the sound and sensible business reason of maximizing a particular industry's potential customers over the long run. Although now largely administered by arms of government, product quality regulation is still good for business.**

Thus, when NAC and Amherst urge the FCC to separate the wheat of Corridor BPL from the chaff of unimproved Access BPL, we are asserting the long term interests of the American business community -- *as well as* the interests of the American people. To call for responsible action by the FCC to screen out those "new technologies" with unacceptable product quality, the Members of NAC and

Amherst do not have to be "liberals", Socialists, Populists, Progressives or anything else that might have raised eyebrows on Sinclair Lewis' MAIN STREET. This is a policy position that can be embraced even by pro-business Heartland Republicans -- which, as a matter of fact, many NAC and Amherst Members are.

Ideally: At least until more is known about BPL interference, sales of new BPL equipment, here or abroad, should be limited to Corridor equipment -- and/or to other BPL equipment, if any, with an interference profile comparable to Corridor.

If that is too much to ask, then at least any new Access BPL equipment which enters the domestic and/or domestic marketplace should be made subject to strict and explicit performance standards … equipped with *active* and *comprehensive* "adaptive interference mechanisms" … and pre-tested for quality before it is sold.

2. *A Functional, Unjustified Elevation Of Unlicensed Spectrum Users Over Licensed Spectrum Users.* The Commission's final rule also fails to meet the substantive statutory requirement for "*equitable* and efficient" spectrum allocation. In its present form -- which includes inadequate requirements for prevention and mitigation of Access BPL interference -- the BPL final rule effectively degrades the value of licenses, held by formally authorized spectrum users, in order to assist others whose operations have not been reviewed in a licensing process at all.

In the past, as a general proposition, the FCC has awarded licenses to selected spectrum users because -- among other possible considerations -- they have a high "social value" and they cause little or no damaging interference to others. These selections merit respect.

(a) *Insufficient Emphasis On "Social Value".* With the term "social value", NAC and Amherst are borrowing a concept which appears often in the fields of political science and other social sciences (including, sometimes, economics). In brief, "social value" refers to one or more aspects of a product, service, activity or other function which: (a) are of value to the overall *society* in which they occur, but (b) cannot be easily and reliably quantified in terms of dollars and cents.

A classic example would be a park versus a parking lot. At least in a heavily urbanized area, or another area (such as a resort town or a fashionable artist colony) where parking spaces are scarce, a parking lot will almost always trump a park in terms of *quantifiable* economic value. The park may in fact have *some* quantifiable economic value (for example, as a "draw" to the town, with local merchants as the beneficiaries), but attempts to quantify such economic value will usually tend to be speculative, long term and based on assumptions about indirect effects. As a "cash cow" that can be milked reliably from Day One, a well-located parking lot will usually out-perform a park -- at least on paper.

The *voters* of most towns, however, will almost always favor a new park over a new parking lot -- *if* they have a choice in the matter. They will usually prefer the park because they can see *unquantified benefits* flowing to their town: the kind that don't usually show up in an accountant's ledger or a stock prospectus. These gains could include recreational opportunities, natural beauty and/or open space. Voters in the town may also see *unquantified costs* in using the land for a parking lot. One such cost could be a blow to the aesthetic appeal of the neighborhood.

In short, the voters of most towns will usually pick a park over a parking lot because they will view the net *social value* of a new park -- that is, the unquantified benefits to the overall society, minus the unquantified costs to the overall society -- as much greater than the net *social value* of a new parking lot.

A prospective business buyer of the property may very well reach a very different decision. If he or she does, there will be at least 2 reasons. First, as noted, the *social* costs and benefits of various options -- and perhaps even some of the *economic* costs and benefits -- cannot be quantified easily and reliably. Second, if the buyer's motivation is "strictly business", rather than personal, he or she is *only* concerned with the costs and benefits that affect the economic "bottom line". The overall impact, on society as a whole, concerns him or her only to the extent that a damaged society might have less money to pay out.

This is why land for parks, and other open space, is usually -- not always, but usually -- acquired by government agencies, non-profit concerns and individuals who are, at least for this purpose, motivated by charity rather than profit. Because these institutions and individuals are, in such cases, acting on behalf of the society as a whole, they heed the *social* costs and benefits of their land acquisition(s).

By contrast, those who acquire land for parking lots are typically "all business": corporations, individual investors and sometimes revenue-hungry government bodies that are focused on raising revenues rather than enhancing aesthetics.

One historic reason why our nation's voters and political leaders came to support having *some* kind of government regulation and/or intervention, at least in *some* cases, was the perceived need to prevent the entire culture and economy from being shaped *solely* by self-interested, economically motivated marketplace decisions in which "social value" was essentially invisible. Market forces can be very creative and productive, while Centrally Planned Economies are generally not. Still, *some* kind of government regulation -- of the *quality of life* and *public safety* varieties -- has been viewed since the *Teddy* Roosevelt Administration as a necessary check and balance. Done wisely and efficiently, selective government regulation can "put a thumb on the scale" when the natural invisibility of "social value" to the marketplace might otherwise threaten the overall society's health and well-being.

(b) *Spectrum Licensing As An Exercise In Protecting "Social Value".* When it effectively decides to "look the other way" in the face of Access BPL interference, the FCC is indirectly hindering the marketing of Corridor BPL (by forcing Corridor BPL to deal with negative "spillovers" from probable interference incidents caused by simultaneously authorized Access BPL). In the same way, the FCC is *also* functionally diminishing the quality of FCC licenses. It is inequitably subordinating licensed spectrum uses, generally known to have a high "social value" and a low potential for interference, in order to benefit unlicensed spectrum users -- with an indefinite "social value" and a high potential for interference.

Thus, without adequate prevention and mitigation of Access BPL interference, the final rule is neither equitable *nor* efficient. It is, in fact, a threat to the very integrity of the FCC's spectrum licensing system.

The FCC should remember that it originally designed Part 15 to accommodate low power equipment, such as household monitors of sleeping babies, with a correspondingly low potential for interference with licensed spectrum uses. Part 15 was not designed to deal with Access BPL equipment, or with any other equipment whose low power levels do *not* guarantee a low potential for interference.

The Petitioners will not go so far as to say that the use of Part 15 for Access BPL technology is *inherently* inappropriate. The use of Part 15 is inappropriate, however, *if* adequate adjustments are not made for the much higher potential for interference from Access BPL systems -- in comparison to the spectrum users who have operated under Part 15 in the past.

Either the normally applicable interference provisions of Part 15 should be strengthened, which was not done to an adequate extent in the current version of the final rule, *or* the FCC should start over by proposing authorization of Access BPL systems as licensed spectrum uses.

(c) *Under-Estimated "Social Value" Of Ham And Shortwave Radio.* The FCC's reference to the "social value" of ham radio reveals a serious under-estimation. On page 25, Report & Order 04-245 makes the following statement:

> **We similarly do not find that amateur radio frequencies warrant the special protection afforded frequencies reserved for international aeronautical and maritime safety operations. We note that in many instances amateur frequencies are used for routine communications and hobby activities. While we recognize that amateurs may on occasion assist in providing emergency communications, we believe that the general Part 15 provisions and the specific provisions being adopted herein for Access BPL operations are sufficient to protect these amateur operations.**

It is a major understatement to report that Amateur Radio operators "*may* on occasion *assist in* providing emergency communications" [emphasis added].

Enough hams have in fact turned out to make a difference in *every* major disaster of recent decades, whether natural or man-made, around the world
Often, as in the case of Chernobyl, their emergency work has been *solo, self-initiated* and undertaken before other emergency communicators have even reached the scene

Further, the FCC's observation overlooks the initiatives that ARRL has undertaken since 9/11 to recruit more hams into emergency communications *and* to boost the skills of those who are already involved, through CERT Training and other options.

The FCC's statement also fails to acknowledge:

The "social value" of *technological innovation* by hams
The "social value" of *training people for broadcast careers*
The "social value" of *community connections* forged by hams
The "social value" of *international friendships* made by hams

As for shortwave radio, the FCC has apparently overlooked:

The emergency communications value of shortwave radio as a source of news when, due to a blackout or other event, all radio and TV stations in a large region are Off The Air
The "social value" of shortwave radio as a source of alternative news that can confirm or deny news reports from an American mass media with increasingly concentrated ownership

3. *Insufficient Attention To Multiple Statutory Directives.* The FCC has emphasized the 1997 mandate to "promote new technologies", but has paid little attention to older, unrepealed goals of the Communications Act. These include "*equitable* and efficient" spectrum allocation *and* enhanced national defense.

As we stressed earlier, the BPL final rule does not preserve "equitable and efficient" spectrum allocation because, among other defects, it bypasses consideration of "social value" and turns upside down the hierarchy of licensed spectrum uses versus unlicensed spectrum uses. Further, it erodes the nation's defense by endangering military communications and civilian emergency communications.

4. ***Insufficient Attention To International Radio Regulations.*** **As the NORTH AMERICAN SHORTWAVE ASSOCIATION (NASWA), NAC, Amherst and others have noted, international radio regulations protect shortwave reception between 2 and 26 MHz. Still, the FCC has not provided any mechanism for resolving predictable conflicts between Access BPL operations, authorized under American law, and shortwave radio reception that is protected by international law.**

C. RELIEF SOUGHT

Text Of The Petition For Reconsideration Itself. **We hereby submit this Motion:**

(1) Petitioners hereby ask the Federal Communications Commission to amend the Final Rule in FCC Docket 04-37, replacing it with the following text:

> **"Effective immediately, new installations of Broadband Over Powerlines (BPL) equipment are prohibited, with the exception of Corridor BPL equipment and/or other BPL equipment (if any) with a comparably low interference profile. This moratorium on installation of certain BPL equipment shall remain in effect until and unless a new Proposed Rule on oversight of BPL operations has been issued by the Commission."**

(2) Petitioners further ask the Federal Communications to forego issuance of the referenced new Proposed Rule until *after* all of the following criteria have been met:

(A) All ongoing studies of BPL by the National Telecommunications Information Administration (NTIA) have been fully completed and made fully available to the general public;

And

(B) A comprehensive study of ionospheric propagation of BPL signals has been fully completed, and made fully available to the general public, by the National Academy of Sciences and/or other qualified institution(s);

And

(C) A comprehensive legal and technical analysis, regarding the impact of BPL commercialization on standing international radio regulations and treaties, has been fully completed, and made fully available to the general public, by the International Telecommunications Union and/or other qualified institution(s).

(3) If the FCC is unwilling to act upon the requests in paragraphs 1 and 2, then Petitioners ask the Commission, as an alternative, to amend the Final Rule in order to:

(A) Incorporate all of the recommendations which have been presented, in FCC Docket 04-37, by Petitioners NATIONAL ANTENNA CONSORTIUM (NAC) and THE AMHERST ALLIANCE;

And

(B) Incorporate the recommendation by Nickolaus E. Leggett for a requirement that all new BPL equipment must have active adaptive interference mechanisms which automatically adjust BPL transmissions to allow at least 3 licensed spectrum uses at the same site (within 200 feet of each other);

And

(C) Incorporate the proposed requirement for pre-testing of new BPL equipment, as presented in FCC Docket 04-37 by Dale Svetanoff and Cortland Richmond;

And

(D) Remove all provisions of the Final Rule which are inconsistent with the incorporated recommendations, as referenced above;

And

(E) Establish clearly that, in the case of any conflict(s) between between BPL transmissions and shortwave reception, international radio regulations which protect shortwave reception shall take precedence over the Commission's authorization of BPL operations.

D. CONCLUSION

For the reasons set forth herein, the Petitioners urge the FCC to act favorably upon, and to adopt in full, their Petition For Reconsideration of the final rule in FCC Docket 04-137.

Respectfully submitted,

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Dated: December 2, 2004

On behalf of the following Petitioners:

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I, Don Schellhardt, Esquire, certify that this day, December 2, 2004, I have sent electronic and/or physical copies of this Multi-Party Petition For Reconsideration to every participant in FCC Docket 04-37 who is referenced in the document.

_____
Donald Joseph Schellhardt, Esquire

Dated: _____
December 2, 2004